(5)

No. 91-87

FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

MICHAEL SCHMIDT,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition For Writ of Certiorari to the United States Court of Appeals of the Seventh Circuit

AMICUS CURIAE OF THE PARISH COUNCIL OF OUR LADY OF LOURDES CATHOLIC CHURCH, THE DANUBE-SWABIAN ASSOCIATION, USA, INC., THE TRICENTENNIAL FOUNDATION, THE AMERICAN AID SOCIETY OF GERMAN DESCENDANTS, AND THE INSTITUTE FOR GERMAN-AMERICAN RELATIONS

(SUPPORTING PETITIONER)

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Attorneys for the Amici Curiae

Case No. 91-87

IN THE UNITED STATES SUPREME COURT
1991-92 Term

MICHAEL SCHMIDT, Petitioner-Defendant

vs.

UNITED STATES, Respondent-Plaintiff

MOTION FOR LEAVE TO FILE
AMICUS BRIEF AND FOR OUT-OF-TIME FILING

The Parish Council of Our Lady of Lourdes Catholic Church, Milwaukee, WI, the Danube-Swabian Association, USA, Inc., Warren, MI, the Tricentennial Foundation, Sepulveda, CA, the American Aid Society of German Descendants, Chicago, IL, and the Institute for German-American Relations, Pittsburgh, PA, acting through counsel, and praying that this Court waive the time requirements of Rule 36.2 for the filing of this Motion, hereby request leave of

this Court to file a brief as amici curiae in the above-entitled appeal. Further, leave of Court for out-of-time filing is respectfully requested.

As required by Rule 36.2, the proposed brief accompanies this motion.

The amici curiae, as set forth further in the brief itself, are groups of American citizens deeply concerned about an increasing, institutionalized denial of citizens' rights by the Office of Special Investigations (OSI) of the United States Justice Department's Criminal Division, particularly in recent denaturalization and deportation proceedings.

The amici curiae view Schmidt's petition to the Supreme Court as very important because the OSI's disregard for Schmidt's rights, as reflected in the OSI's arguments against him, typifies a

dangerous new tack in OSI prosecution practices.

This amicus brief describes key characteristics of this growing new tack, and asks this Court for help. While Schmidt's counsel concentrates on the narrow question of denial of trial (certainly important to Schmidt), the attached brief deals more directly with the substantive issues raised by the OSI's current efforts against many citizens:

-use of mere guard-status as grounds for a finding of "persecution";

-persistent misapplication of this Court's Fedorenko decision in an effort to find a per se rule which this Court never intended; and

-attempts to strip away knowledge and intent as elements of "persecution," even in the absence of active wrongful conduct.

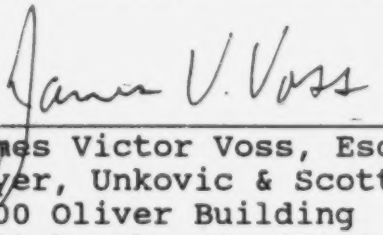
These issues are relevant to disposition of the case, just as they were relevant in disposition of the just-issued Sixth Circuit case of Petkiewytsch v. INS, decided September 30, 1991. Unlike the briefs of the parties in the instant case, the attached amicus brief cites and applies the very thorough Petkiewytsch decision. Petkiewytsch appears to be the most thorough judicial analysis to date of precisely the substantive questions important to Schmidt's appeal.

The amici curiae sought consent of both parties. Consent was granted by Schmidt, after refusal by his counsel. The OSI refused its consent, just as it did earlier when requested to consent to proposed filing of an amicus brief with the Seventh Circuit.

This brief would have been prepared

and filed earlier had the attorneys earlier been aware of the Seventh Circuit's denial of rehearing. The brief was filed promptly when this fact became known and the amici requested that this brief be filed.

Respectfully Submitted,



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Case No. 91-87

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MICHAEL SCHMIDT, Petitioner-Defendant

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UNITED STATES, Respondent-Plaintiff

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TABLE OF CONTENTS Page

Table of Authorities i

Interest of the Amici Curiae 1

Argument 3

Mere Status As a Guard Is Insufficient As Grounds For a Holding of Assistance In Persecution Because of Race, Religion, National Origin or Political Opinion. 3

The Per Se Rule Urged by the OSI Is Not Found in the Fedorenko Decision. 7

Knowledge Is an Essential Element of Persecution For Race, Religion, National Origin or Political Opinion. 10

The Lower Court Decisions in the Instant Case Allow the Practice of Guilt By Association. 13

Summary of Argument. 15

Conclusion. 17

Appendix (Amici Curiae Letters). . . . 19

TABLE OF AUTHORITIES Page

Petkiewytsch v. INS

Decided September 30, 1991
Sixth Circuit Court of Appeals
___ F2d ____
Decision Attached . . . . . 4, 5, 6, 10.

Fedorenko v. United States
United States Supreme Court
(1981)
449 US 490
66 L Ed 2d 686
101 S Ct 737. . . . . 7, 8, 9, 10, 11, 12, 15, 16.

Kulle v. INS
7th Circuit Court of Appeals
825 F2d 1188 . . . . . 9.

INTEREST OF THE AMICI CURIAE

The amici curiae are groups of American citizens deeply concerned about an increasing, institutionalized denial of citizens' rights by the Office of Special Investigations (OSI) of the United States Justice Department's Criminal Division, particularly in recent denaturalization and deportation proceedings.

Michael Schmidt is a long-time American citizen who is innocent of involvement in Nazi persecution by any reasonable standard of law. The amici curiae see the OSI's attacks against Schmidt and others, including many friends and neighbors, as gross perversions of the law.

The amici curiae view Schmidt's petition to the Supreme Court as critically important because the OSI's disregard for Schmidt's rights, as reflected in the OSI's positions and arguments against him,

typifies a dangerous new tack in OSI practices. This amicus brief describes key characteristics of this new approach, and asks this Court to stop it.

The enormous strength and perhaps-even-excessive motivation of the OSI's prosecutorial machine, applied against an aging group of low-level World War II conscriptees who cannot begin to afford the kinds of defense the OSI's assaults demand, are matters of grave concern to the amici curiae. The OSI's assaults against Schmidt and others are assaults on their fellow American citizens.

The amici curiae recognize the OSI's massive strength and the lack of effective legislative and administrative oversight as a prescription for massive denials of citizens' rights. They see such abuses occurring at an accelerating pace, even as the 1940's fall more decades into the past.

In view of the mixed signals coming from various appeals courts and the OSI's persistence in applying unreasonable rules and standards, the amici curiae understand that the intervention of this Court is needed to bring reform to the administration of justice in an area of great and particular importance to them.

The interest of the amici curiae is shown further by their attached letters.

ARGUMENT

Mere Status As a Guard Is Insufficient As Grounds For a Holding of Assistance In Persecution Because of Race, Religion, National Origin or Political Opinion.

Unable to find a continuing stream of defendants who actively assisted in Nazi persecution because of race, religion, national origin or political opinion, the OSI is increasingly, as in Schmidt's case, basing its complaints against aging Ameri-

can citizens merely upon their status as guards some 40-50 years ago -- rather than on allegations of specific active wrongful conduct.

The OSI's accusations against Schmidt with respect to his service during the war all relate to status. He is not accused of ever hurting anyone during his time as a guard, of ever shooting anyone or at anyone, of ever striking or even shoving anyone, or of ever having seen any such things. Schmidt admitted serving as a guard outside a walled prison, and this alone was the basis for the summary judgment against him.

The very recent unanimous decision of the Sixth Circuit Court of Appeals in the case of Petkiewytsch v. INS, (decided September 30, 1991; decision attached), is the most thorough judicial analysis to date of precisely the substantive ques-

tions raised in the instant appeal. Its logic and ruling clash directly with the Seventh Circuit decision from which Schmidt here appeals. The Sixth Circuit's review of legislative histories and case law clearly compelled its decision that mere status as a guard does not satisfy the statutory language regarding "persecution." This Court should adopt the Sixth Circuit's rationale on the guard-status issue and related issues.

Like Schmidt, Petkiewytsch was a guard against whom no accusations of active wrongdoing were made. The Petkiewytsch decision is commended to the Court.

Turning for a moment to a procedural issue in the instant case, the district court ignored undisputed evidence of admirable conduct by Schmidt and found guilt by status on summary judgment,

denaturalizing citizen Schmidt for "assisting in persecution" without even giving him a chance to stand before a court, even once. Summary judgment clearly denied Schmidt an appropriate opportunity to defend himself.

It is ironic that the Seventh Circuit, in the portion of its 2-1 majority opinion which described the horrors of the Third Reich, referred to "incarceration without trial for indefinite periods of time." Michael Schmidt, too, has been denied a trial, despite the absence of any specific active-conduct charge against him and despite his long-time status as an American citizen. Furthermore, for three and one-half years this retired janitor and his family have been put through hell at the hands of our government, despite the fact that, in the words of the Sixth Circuit in the Petkiewytsch decision:

> "Deporting this petitioner would not further the Holtzman Amendment and would carry out no discernable policy of the United States." (page 20)

This Court should overturn the decision of the Seventh Circuit in the instant case, and stop the OSI from accusing elderly Americans of having "assisted in persecution" based merely on their former status as guards.

The Per Se Rule Urged By the OSI Is Not Found in the Fedorenko Decision.

A key part of the OSI's current approach to condemning merely on the basis of status is a gross misapplication of the Supreme Court's decision in Fedorenko v. United States, 449 US 490 (1981).

The OSI makes much of a portion of footnote 34 of the Fedorenko decision which states, "[T]here can be no question that a guard who was issued a uniform and armed with a rifle and a pistol, who was paid a stipend and was regularly allowed

to leave the concentration camp ... fits within the statutory language about persons who assisted in the persecution of civilians." When they generalize this footnote statement, the OSI attorneys misread it and the intent of the decision.

If the Court had intended Fedorenko to establish the ironclad per se rule urged by the OSI, it would not have been put in a footnote. In fact, it is only reasonable to read "a guard who" as the Court's way of referring to Fedorenko in particular. But not all guards were like Fedorenko; Schmidt most certainly was not.

Indeed, the Supreme Court's clear intent, as set forth later in the same footnote, is that cases be examined on a case-by-case basis. The Court said:

> "Other cases may present more difficult line-drawing problems but we need decide only this case."

In its arguments against Schmidt, the

OSI has contended that Fedorenko and its progeny focus on the conduct of a typical armed guard of prisoners at a concentration camp to hold that guard duty per se renders a visa applicant under the DPA ineligible for a visa. In fact, however, the cases since Fedorenko have looked at individual conduct, and that was just as Fedorenko commands.

Perhaps the strict per se rule urged by the OSI would be acceptable if applied at a time before citizenship rights have accrued to an individual, as in Kulle v. INS, 825 F2d 1188 (CA7 1987). But after rights have accrued, as in Schmidt's and other denaturalization cases, Fedorenko clearly does not close the door to showings of fact contrary to the OSI's expectations of the typical guard.

Fedorenko was never intended as the simplistic per se tool that OSI urges for

use against prison and camp guards of the World War II era. The crack in the door was not slammed shut.

Summary judgment, as in Schmidt's case, precludes the sort of detailed analysis which the Supreme Court calls for in Fedorenko. See also Petkiewytsch, supra. For that reason alone, the lower court should be reversed in the present matter.

This Court should correct the persistent misapplication of its 1981 Fedorenko by the OSI.

Knowledge Is an Essential Element of Persecution For Race, Religion, National Origin or Political Opinion.

Because of the OSI's inability to allege active wrongful conduct, the OSI now often finds it necessary, as in Schmidt's case, to go to the extreme of arguing that a person whom it could not accuse of persecution in the form of specific wrongful conduct need not even

have had concurrent knowledge of persecution because of race, religion, national origin or political opinion.

This leads to an unusual conclusion, to wit: A long-time American citizen who, as an eastern European teenager of German heritage conscripted by the Germans, did not actively assist in Nazi persecution 50 years ago and did not have knowledge of Nazi persecution on grounds of race, religion, national origin or political opinion, nonetheless must be denaturalized by a federal court, without trial, on a summary finding of having "advocated or assisted in persecution on grounds of race, religion, national origin or political opinion."

The OSI's misreading of Fedorenko is part of its effort to skirt the knowledge issue. The OSI has argued that enforcing concentration camp enslavement through

service as a guard is conduct which per se constitutes the assistance in persecution proscribed by the DPA. This is a dramatic overstatment of Fedorenko. In fact, that Supreme Court decision makes it very clear that Fedorenko knew what was going on at the Treblinka concentration camp. He knew there was persecution, and he knew it was for reasons of race, religion, national origin or political opinion. To imply that such knowledge is unnecessary is simply wrong. That view cannot stand under the light of Fedorenko.

Knowledge and intent must be elements of "assisting in persecution." The idea of unintentional persecution is a contradiction in terms. As Judge Pell said in his dissent below,

> "I cannot conceive how a person can be rendering assistance in persecution without some showable knowledge ... ."

This Court should require that knowledge of persecution on grounds of race, religion, national origin or political opinion be a prerequisite to a finding of actionable "assistance in persecution," certainly at least in the absence of specific allegations of active wrongful conduct.

The Lower Court Decisions in the Instant Case Allow the Practice of Guilt By Association.

The OSI attorneys accuse Michael Schmidt of nothing specific -- but the entire Holocaust in general, and pile on top of that "immorality" because of the lot that life dealt out to the man, who never even counted himself a Nazi. It is purely a matter of guilt by association.

Indeed, what the OSI lawyers are doing in this matter, as can be seen clearly by a reading of the Amended Complaint, is beneath the moral equivalent of

what Schmidt is said to have done. Acting under color of law, they are mercilessly ruining the life of an innocent man. Like guilty Nazis of the day (who should indeed be denaturalized and deported under applicable law), the OSI lawyers are themselves administering blows, under color of law -- but with complete disregard for personal guilt or innocence. Furthermore, they appear to be doing so in the belief that somehow they represent some higher good.

There is no specific charge of wrongdoing against Michael Schmidt. He must not be condemned based on guilt by association. Condemnation because of status is precisely what troubles us about Nazi atrocities.

Yet, the decision of the district court on summary judgment, and the upholding of that decision by the Appeals Court on a 2-1 vote, unless overturned,

will serve to allow the OSI's continued practice of guilt by association.

SUMMARY OF ARGUMENT

The OSI is still engaging in efforts to secure for itself an effective prosecutorial tool -- i.e., court holdings that a person's mere status as a guard is sufficient grounds for a holding of "assistance in persecution." Such a concept is wrong on its face, and is not supported either by legislative history or case law. Nevertheless, in view of decisions like that here appealed by Schmidt, a strong Supreme Court ruling against the concept of guilt by mere status is desperately needed.

The OSI argues that a per se rule on this point is found in the 1981 Supreme Court decision in Fedorenko. Such argument is a gross misapplication of the law.

In fact, the Fedorenko decision is directly concerned with the nature of individual conduct, as certain subsequent cases clearly note. But the OSI needs to be told, and clarification is needed by the courts.

The OSI argues, as it does against Schmidt, that knowledge of persecution is not an essential element of persecution because of race, religion, national origin or political opinion. It bases its arguments on Fedorenko, a decision which clearly fails to support that rash conclusion. Knowledge of persecution must be clearly understood to be a prerequisite to a finding of actionable "assistance in persecution."

Guilt by association is contrary to the American system of law. Court decisions and government prosecutions surely should not be based on concepts and

holdings which are tantamount to guilt by association.

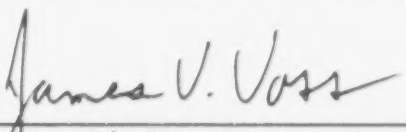
A thorough hearing and ruling on the issues of this case by this honorable Court are necessary to work justice for Michael Schmidt. A hearing and ruling are also necessary at this time to guide the often-divided lower courts, who are faced with the OSI's persistent arguments based on incorrect principles. Stated very directly, a hearing and ruling by this Court are essential as a guide for, or throttle on, the OSI with respect to the handling of its ever-growing docket of cases against aged American citizens.

CONCLUSION

The amici curiae respectfully request that the petition of Michael Schmidt for a hearing of his appeal be granted. They further request that this honorable Court

eventually render a decision clarifying the issues summarized above, which are of great importance to the amici curiae and others who love justice.

Respectfully Submitted,



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APPENDIX

Amici Curiae Letters

RECEIVED
OCT. 1 1991

Our Lady of Lourdes Congregation
3722 S. 58th Street
Milwaukee, WI 53220

September 28, 1991

Attorney Peter Jansson
Jansson & Shupe, Ltd.
425 Main Street
Racine, WI 53403

Dear Mr. Jansson,

As a parish council we have voted to file a friend of the court brief in the Michael Schmidt case because we feel so strongly about the denial of rights to ethnic German conscriptees who had the misfortune to serve as guards during World War II and are not accused of any specific wrongdoing. We believe that they are being punished merely because of their status.

Would you be so kind as to file a brief on our behalf?

Thank you for your kind attention to this matter.

Parish Council of Our Lady of Lourdes Congregation
Brian Croegaert, Co-chairperson

Brian Croegaert

Danube Swabian Association of the U.S.A. Inc.
Verbund der Donauschwaben in den U.S.A. e. V.

Sept. 29,1991

Mr. Peter N. Jansson, Attorney
245 Main Street,
Mezzanine Suite
Racine, WI 53403

Dear Mr. Jansson!

We, the above organization, wish to file a Friend of the Court Brief on behalf of Michael Schmidt, because of the gross wrongs we see in this case and a number of other where our Senior Citizens have been targeted by the OSI.

We would be happy if other organizations join us in the Brief.

Kindly prepare the necessary Amicus Brief and accept our appreciation.

Sincerely

Adam Medal

Adam Medal, President
Danube Swabian Association of the U.S.A. Inc.

BEST AVAILABLE COPY

THE TRICENTENNIAL FOUNDATION

Honoring Over 300 Years of German-American Achievement

Mr. Peter Jansson, Esq.
Jansson & Shupe, Ltd.
245 Main Street
Racine, WI 53403

Oct. 2, 1991

Dear Mr. Jansson,

As an organization we further the interests of the German-American community, indefinite as to number of persons, of the general public. Many of them have paid the ultimate price for Freedom and Democracy for the United States.

We respectfully request you to represent our interests and to file a friend of the court brief in the case of Michael Schmidt, because we feel stronly about the denial of rights to ethnic Germans, who had the misfortune to serve as conscriptees and were assigned to guard duty during World War II and have not been accused of any specific wrongdoing, except of serving on the loseing side.

If there is such-a-thing as justice or morals in our society, than we must raise the question- was Morgenthau and his plan or Eisenhower, as discribed in the Book "Other Losses" by James Bacque, after the War --- or the Pilots during the War over Dresden more morally accountable or responsible than a soldier ordered to pull guard duty in time of War?

Thank you for you interest in this matter,

Sincerely,

H. W. Eberhard

Chairman
Vice President
Secretary
Treasurer
Director

Washington, D.C.
Advisory Board

An IRS-recognized 501(c)(3) non-profit organization founded 1983 in California. Contributions are tax-deductible to the full extent of U.S. tax. Financial report available upon request.

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American Aid Society
of German Descendants

6540 North Milwaukee Avenue – CHICAGO, ILLINOIS 60631

October 3, 1991

Mr. Peter H. Jansson, Attorney
245 Main Street,
Hermanian Suite
Racine, WI 53403

Dear Mr. Jansson:

We, the above organization, wish to file a Friend of the Court Brief on behalf of Michael Schmidt, because of the gross wrongs we see in this case and a number of others where our Senior Citizens have been targeted by the OSI.

We would be happy if other organizations join us in this Brief. Kindly prepare the necessary Amicus Brief and accept our appreciation.

Sincerely,

Hans Gebavi

Hans Gebavi, President
American Aid Society of German Descendants

INSTITUTE FOR
GERMAN AMERICAN
RELATIONS (IGAR)

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10/2/91

Peter Jansson
Jansson & Shupe, Ltd.
245 Main St.
Racine, WI 53403

Dear Mr. Jansson,

Our organization wishes to submit an amicus curiae brief before the Supreme Court regarding the Michael Schmidt case, using the arguments which we discussed.

We are aware of many cases in which the OSI is using just status as a guard and other strained and wrongful arguments to denaturalize and deport elderly American citizens who are ethnic Germans from Eastern Europe.

Until 3 days ago, we were not aware that we could file such a brief and appreciate your doing so.

Sincerely,

M. Bouvier

Dr. Marianne Bouvier
Executive Director
Institute for German American Relations

MB:al

RECOMMENDED FOR FULL TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 24

No. 90-3952

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LEONID PETKIEWYTSCH,
Petitioner,

v.

IMMIGRATION AND
NATURALIZATION SERVICE,
Respondent.

Petition for Review
of a Deportation Order
of the Board of
Immigration Appeals

Decided and Filed September 30, 1991

Before: MERRITT, Chief Judge; LIVELY, Senior Circuit Judge; and HULL, Chief District Judge.*

LIVELY, Senior Circuit Judge. The question in this case is whether a permanent resident alien who served involuntarily as a civilian guard in a German "labor education camp" during the period of Nazi control and who never personally abused prisoners is subject to deportation under the Immigration and Nationality Act of 1952, as amended, (the Act), 8 U.S.C. § 1101, et seq. More specifically, the question arises under section

*The Honorable Thomas G. Hull, United States District Chief Judge for the Eastern District of Tennessee, sitting by designation.

241(a)(19) of the Act, 8 U.S.C. § 1251(a)(19)(the Holtzman Amendment). The Holtzman Amendment was enacted in 1978; section 103 provides for the deportation of any alien who, under the direction of or in association with the Nazi government of Germany, ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion between March 23, 1933 and May 8, 1945. Holtzman Amendment § 103, Pub. L. No. 95-549, 92 Stat. 2065, codified at 8 U.S.C. § 1251(a)(19).

I.

The facts relating specifically to the petitioner's background and conduct are not disputed by the parties and consistent factual determinations were made by the immigration judge and the Board of Immigration Appeals (the Board).

A.

The petitioner is a 67 year old married male and a native of Poland. The petitioner lived in Poland under Nazi occupation until 1944. In 1944, petitioner, then age 21, fled with his family from Poland to Czechoslovakia to avoid the consequences of battle and occupation by the approaching Russian army. From Czechoslovakia, the petitioner and his family were sent with other refugees to a transit camp in Austria. After arriving in Austria, the family was ordered by the Germans to report to the labor exchange in Kiel, Germany. At Kiel, the family was separated. The petitioner's parents were assigned to a local fish cannery while the petitioner and his twin brother were ordered to report to the Kiel-Hasse labor education camp to serve as civilian guards. The petitioner and his twin brother objected to the assignment but nevertheless reported for duty. Refusing the assignment would have subjected the petitioner to imprisonment or execution.

After reporting to the camp, the petitioner, though serving as a *civilian* guard, was issued a used uniform of a

Gestapo SS member and given a rifle with five rounds of ammunition. The petitioner was instructed on how to escort prisoners to and from work sites and how to clean and load his rifle. His guard duties required him to act as a perimeter guard, to escort prisoners to work sites and, on a rotating basis, to stand guard at the entrance to a bunker where prisoners were interrogated and sometimes mistreated. The petitioner's primary responsibility was to prevent the escape of prisoners and he was under orders to shoot anyone attempting to escape. When not on duty, the petitioner was allowed unescorted liberty outside the camp which he used to visit his family. The petitioner was informed that he would be imprisoned or shot if he disobeyed orders or attempted to run away.

While serving as a civilian guard, the petitioner witnessed frequent mistreatment of prisoners and was aware that some executions took place. However, during his eight-month service as a civilian guard the petitioner never used his rifle, never struck a prisoner and never personally inflicted any form of abuse upon prisoners beyond impeding their escape through his presence as a civilian guard.

At the war's conclusion, the petitioner and his twin brother sought work at local farms. They were quickly apprehended by the British, however, and interned for thirty-four months as suspected war criminals. After his internment, the petitioner was released by the British under "category 5," which meant that he was totally exonerated of any wrongdoing and of all charges against him. In March 1948, the petitioner applied to the Preparatory Commission of the International Refugee Organization to receive benefits as a refugee, which would have certified him for entrance into the United States under the Displaced Persons Act of 1948 (DPA), Pub. L. No. 80-774, ch. 647, 62 Stat. 1009 (1948), as amended, June 16, 1950, Pub. L. No. 81-555, ch. 262, 64 Stat. 219 (1950). However, part II of annex I to the Constitution of the International Refugee Organization (IRO), which was incorporated by reference into the DPA

as enacted in 1948, denied benefits to anyone who could be shown "to have assisted the enemy in persecuting civil populations. . . ." IRO Constitution, annex I, part II § 2(a); DPA § 2(b). The petitioner was denied assistance from the IRO because he had served as a guard at the labor education camp. In 1955, the petitioner applied to the United States Consulate in Hamburg, Germany for an immigration visa under the Immigration and Nationality Act, which then contained no provision denying admission to those who had participated or assisted in Nazi persecutions. On March 9, 1955, the petitioner was issued an immigration visa under the Act by the American Consulate in Hamburg, Germany, and has lived in the United States as a permanent resident since 1955.

B.

The administrative record contains expert testimony regarding the system of camps established by the Nazi regime, their purposes and their organizational control. The most repressive Nazi camps came under the direction the German SS, the organization established by Hitler to suppress groups targeted on the basis of race, religion and national origin. Concentration camps were established prior to the war in order to intimidate and torture those targeted groups perceived as impeding Nazi goals. Concentration camps were used by the SS as permanent institutions of the state and were designed as intimidation instruments for political dissenters, opposition groups and groups in society that the Nazi regime determined to be unworthy of full citizenship. These camps contained many permanent buildings, heavily concentrated inmates and were surrounded with electric wire carrying a lethal charge.

After the outbreak of war, sub-camps of the concentration camps emerged, also controlled by the German SS, which became known as the extermination camps. Consisting of gas chambers, railroad sidings and very little else, extermination camps such as Auschwitz, Treblinka and Buchenwald were intended and used solely

to eliminate Jews and other groups of people deemed inferior by the Nazis.

Forced labor camps were another sub-component of concentration camps, also primarily under the control of the German SS. Forced labor camps were temporary outcamps typically set up near concentration camps or near a particular work site to permit exploitation of the labor available from the concentration camp for economic purposes. These camps were also fenced, but much less extensively than concentration camps, and the fencing typically did not contain a lethal charge.

This appeal involves a labor education camp. Labor education camps were initially created as repositories for foreign laborers involuntarily deported into Germany to fill the acute labor shortage created by the massive mobilization for war. However, the labor education camps also quickly became used as punishment camps for workers accused of slacking, other labor infractions or other generalized violations of state policy, such as sexual contact with German nationals, minor crimes, practicing religion in a language other than German or failing to wear a special badge designating one as Jewish or Polish. Labor education camps involved much less security than other camps and typically involved sentences of relatively short duration.

At the Kiel-Hasse labor education camp there was no fence nor any other feature of a concentration or extermination camp and the normal period of incarceration was fifty-six days. Physical abuses, malnutrition and overcrowded conditions were nevertheless prevalent and former inmates testified to interrogations, torture and executions. Expert witnesses testified that documents from Kiel-Hasse revealed that guards were prohibited from beating prisoners at Kiel-Hasse. These witnesses expressed the opinion that the inmates experienced persecution primarily at the hand of SS guards present at the camp and more senior Gestapo officials rather than at the hand of civilian guards such as

the petitioner.

II.

In July 1985 the United States Immigration and Naturalization Service (INS) issued an Order to Show Cause charging that the petitioner was deportable, among other provisions, under section 103 of the Holtzman Amendment, for assisting or otherwise participating in Nazi persecution. The petitioner denied the allegations in the show cause order material to deportation under the Holtzman Amendment. In April 1986 an eight-day evidentiary hearing was held before an immigration law judge on the issue of deportability. During the hearing the testimony of numerous witnesses was admitted, including historians with expertise in the operation of Nazi camps, former inmates of Kiel-Hasse, government officials and family members of the petitioner.

In March 1987 the immigration judge issued a brief opinion that ordered the deportation proceedings against the petitioner terminated. The immigration judge found that the petitioner had not personally engaged in any persecutorial acts and that the petitioner's "wrongful conduct, at most, was his acceptance under duress of his duties as a civilian labor education camp guard." Noting the petitioner's young age at the relevant time period, the immigration judge concluded that the petitioner "was equally a victim of the times that he lived in. . . ." The government appealed the immigration judge's opinion to the Board.

The Board rendered a decision in May 1990 reversing the decision of the immigration judge and ordering deportation. After a thorough review of the evidence, the Board agreed with the factual findings deemed critical by the immigration judge that the petitioner's service as a civilian guard was involuntary and that the petitioner had not personally engaged in any acts of abuse. The Board in fact described the petitioner as "a rather reluctant guard who performed his duties as ordered in order to escape

imprisonment or death." Unlike the immigration judge, however, the Board found these factual determinations to be without legal relevance in applying the Holtzman Amendment. The Board concluded that only the "objective *effect*" of the petitioner's conduct controlled (emphasis in original) and that the "objective effect" of his service as a civilian guard was to assist the Nazis in their persecution of those within Kiel-Hasse by preventing their escape.

The Board found the key issue presented by the case to be whether Kiel-Hasse was a place where persecution occurred due to race, nationality, religion or political opinion, as is required for deportation under the Holtzman Amendment. After reviewing the policies served by the labor education camps and the practice of using the camps as an enforcement mechanism to carry out labor decrees directed against foreign workers deemed politically suspect, racially unreliable or of an inferior national origin, the Board concluded that Kiel-Hasse was a repository for the persecution of people based on race, nationality and political opinion. The Board further found that persecution took place in Kiel-Hasse, not only by the fact of involuntary confinement, but also by deprivation, torture and executions. The Board thus concluded that the petitioner was deportable under the Holtzman Amendment because of his duties as a guard at a camp where persons were persecuted based upon race, religion, national origin or political opinion.

III.

The petitioner has challenged the factual finding of the Board that Kiel-Hasse was a place of persecution based upon race, religion, national origin or political opinion. However, the record contains evidence of deprivations, torture and executions at Kiel-Hasse that leaves no question but that it was a place of persecution. Additionally, petitioner's contention that internment at Kiel-Hasse required the commission of an act by the inmate, and thus that the persecution in the camp was

based upon an infraction rather than upon race, religion or national origin is unpersuasive. While German nationals were not immune from labor education camp imprisonment for genuine labor–violations, the record clearly demonstrates that the "infractions" resulting in labor education camp imprisonment were predominantly based upon race and nationality, such as the refusal of Jews, Poles or other eastern workers to wear the insignia assigned to them on their clothing. Persecution stemming from such "infractions" must, therefore, be considered to be based on race, religion, national origin or political opinion. We agree with the Board's decision in this regard.

IV.

This brings us to the principal issue presented by this appeal: Whether the Board correctly construed the Holtzman Amendment to require the deportation of one who involuntarily served as a labor education camp civilian guard to avoid imprisonment or death and who never personally committed any acts of abuse against prisoners.

The Holtzman Amendment was added to the Act in 1978. Section 103 of the amendment provides, in pertinent part:

> Any alien in the United States . . . shall, upon the order of the Attorney General, be deported who-
>
> * * *
>
> (19) during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with-
>
> (A) the Nazi government of Germany,
>
> (B) any government in any area occupied

> by the military forces of the Nazi government of Germany,
>
> (C) any government established with the assistance or cooperation of the Nazi government of Germany, or
>
> (D) any government which was an ally of the Nazi government of Germany,
>
> ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion; . . .

8 U.S.C. § 1251(a)(19).

A.

Whether § 1251(a)(19) requires the result reached by the Board is clearly a question of statutory construction. The standard of review applicable to questions of statutory construction was stated by the Supreme Court in *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987): " ' The judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent. [Citing cases.] If a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue, that intention is the law and must be given effect.' " *Id.* at 447-48 (quoting *U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 n.9 (1984)). We discuss briefly the development of the relevant legislation as a background to our more specific treatment of the issue before the court.

B.

Congress passed the DPA in 1948 as a means of temporarily eliminating restrictive immigration quotas and providing relief to the vast numbers of persons displaced by the ravages of World War II by permitting their

entrance into the United States for permanent residence. As initially enacted, the DPA expressly prohibited the issuance of a visa "to any person who is or has been a member of, or participated in, any movement which is or has been hostile to the United States or the form of government of the United States." DPA § 13, Pub. L. No. 80-774, ch. 647, Stat. 1009, 1014 (1948). In addition, § 2(b) of the DPA limited the application of the DPA to those "who [were] the concern of the International Refugee Organization" under the terms of that organization's constitution. Congress thus incorporated by reference the provision of annex I, part II of the IRO Constitution which listed the categories of persons who were not of concern to the IRO. Such persons were described in the IRO Constitution as follows:

> 2. Any other persons who can be shown:
>
> (a) to have assisted the enemy in persecuting civil populations of countries, Members of the United Nations; or
>
> (b) to have voluntarily assisted the enemy forces since the outbreak of the Second World War in their operations against the United Nations.[1]
>
> ---
>
> [1]Mere continuance of normal and peaceful duties, not performed with the specific purpose of aiding the enemy against the Allies or against the civil population of territory in enemy occupation shall not be considered to constitute "voluntary assistance".

IRO Constitution, Chapter XXIX, annex I, part II § 2(a) & (b)(footnote in original).

Congress subsequently amended § 13 of the DPA in 1950 to prohibit issuance of a visa "to any person who

advocated or assisted in the persecution of any person because of race, religion, or national origin. . . ." June 16, 1950 Amendment to DPA, Pub. L. No. 81-555, ch. 262, 64 Stat. 219, 227 (1950). Thus, as enacted in 1948 and as amended in 1950, the DPA effectively blocked immigration to the United States of those who assisted in persecution.

The Immigration and Nationality Act as adopted in 1952 did not proscribe issuance of visas to those who had assisted in persecution during the war. Section 340(a) of the Act, 8 U.S.C. § 1451(a), did provide authority to denaturalize and revoke the citizenship of one who gained admission to the United States either illegally, by concealment of a material fact, or by willful misrepresentation. Thus, one who entered the United States under the DPA by concealing assistance or participation in persecution remained subject to deportation under § 340(a) of the Act. However, because the Act contained no restrictive provision similar to the DPA, a person who assisted in persecution but who entered the United States pursuant to the Act legally and without concealment or misrepresentation was not subject to deportation under § 340(a).

This loophole in the Act was remedied by section 103 of the 1978 Holtzman Amendment which added to the permanent immigration laws of the United States a provision for the deportation of aliens who participated in Nazi-directed persecution of individuals "because of" race, religion, national origin or political opinion. The Holtzman Amendment thus provided an independent basis for deporting immigrants who entered the United States lawfully despite their participation or assistance in persecution of civilians during the war.

C.

Although the parties briefed the case extensively and argued it fully, their positions can be stated rather succinctly. The petitioner contends that this is a case of

first impression because no court has decided that a resident alien who has been found to have served involuntarily as a guard in a labor education camp is deportable under the Holtzman Amendment. He argues that these two factors - involuntariness and guard duty in the least restrictive type of Nazi detention camp - demonstrate that he was not a war criminal. The legislative history of the Holtzman Amendment makes it clear, he asserts, that it was not intended to apply to a person with his wartime record.

The government responds that neither of the factors cited by the petitioner makes any difference. The cases, particularly *Fedorenko v. United States*, 449 U.S. 490 (1981), make it clear, according to the government, that the petitioner is deportable because Kiel-Hasse was a "place of persecution" and the petitioner assisted in the persecution of individuals "because of race, religion, national origin, or political opinion." It is enough, the government argues, that the petitioner wore a uniform and carried a loaded weapon and his job was to prevent the escape of those confined and subject to persecution.

It is clear that the case is unique in at least one respect: the immigration judge and the Board agreed that the petitioner acted involuntarily and that the record contains no evidence that the petitioner personally abused or mistreated any inmate. Many of the cases we have examined contained sharply conflicting evidence of the alien's personal participation in persecution, and deportability often turned on a court's resolution of such evidence. Here, although a number of former inmates of Kiel-Hasse testified, none was able to relate an incident in which the petitioner abused anyone.

V.

The Holtzman Amendment, although an independent legislative act, was designed to "establish within the permanent U.S. immigration law a provision which . . . appeared previously in [the DPA]." H.R. Rep. No. 95-

1452, 95th Cong., 2d Sess. at 3, *reprinted in* 1978 U.S. Code Cong. & Admin. News 4700, 4702. Thus, our starting point is the Supreme Court's construction of the DPA in *Fedorenko*. We then examine decisions applying the teachings of *Fedorenko* to cases under the Holtzman Amendment.

A.

Fedorenko involved denaturalization proceedings against Feodor Fedorenko. Fedorenko gained permanent admission to the United States in 1949 under the 1948 DPA. During the war, Fedorenko, who was a Ukranian, served in the Russian army. He was captured by the Germans and required to serve as an armed guard at the Nazi extermination camp, Treblinka. 449 U.S. at 494. Fedorenko denied personal involvement in the atrocities at Treblinka, but admitted that he followed orders by shooting in the general direction of escaping inmates during an uprising. *Id.* at 500. In his application for a visa under the DPA, Fedorenko deliberately concealed his service as a guard at Treblinka. *Id.* at 496. In 1969 Fedorenko applied for citizenship, again concealing his service at Treblinka, and became a United States Citizen. *Id.* at 497. Arguing that his service at Treblinka constituted "assist[ance] [to] the enemy in persecuting civil populations" under the 1948 DPA, the government instituted a denaturalization action against Fedorenko in 1976 under section 340(a) of the Act, 8 U.S.C. § 1451(a) for concealment of material evidence.

The Supreme Court held that Fedorenko's involuntary service as an armed guard at Treblinka disqualified him as a matter of law from admission to the United States under the DPA. *Id.* at 514. In so ruling, the Supreme Court specifically rejected the argument that the DPA required the conduct constituting assistance in persecution to be voluntary. *Id.* at 512. In place of interpreting the DPA to include a voluntariness requirement, the Supreme Court directed lower courts to focus "on whether particular conduct can be considered assisting the *persecution* of

civilians." *Id.* at n.34 (emphasis in original). The Supreme Court offered some assistance to lower courts in making this difficult determination by describing a continuum of conduct:

> Thus, an individual who did no more than cut the hair of female inmates before they were executed cannot be found to have assisted in the persecution of civilians. On the other hand, there can be no question that a guard who was issued a uniform and armed with a rifle and a pistol, who was paid a stipend and was regularly allowed to leave the concentration camp to visit a nearby village, and who admitted to shooting at escaping inmates on orders from the commandant of the camp, fits within the statutory language about persons who assisted in the persecution of civilians.

Id. Having described the continuum, the Court noted that "[o]ther cases may present more difficult line-drawing problems. . . ." *Id.*

B.

The "line drawing" in cases under the Holtzman Amendment has been particularly difficult and has produced conflicting results. In *Schellong v. INS*, 805 F.2d 655 (7th Cir. 1986), *cert. denied*, 481 U.S. 1004 (1987), the court of appeals applied the Holtzman Amendment to affirm the deportation of a person who voluntarily joined a special commando unit of the Nazi SS and served as an armed guard at two concentration camps. *Id.* at 656-57. There was no evidence, however, that Schellong personally engaged in physical abuse of prisoners while serving as a guard. *Id.* at 657. The court noted that it had previously held in *United States v. Kairys*, 782 F.2d 1374 (7th Cir.), *cert. denied*, 476 U.S. 1153 (1986), that service as a guard at a concentration camp equaled persecution under the DPA without proof of personal involvement in atrocities. *Id.* at 660. Concluding that the purposes of the two statutes were

identical, the court found that proof of Shellong's service as a guard at a concentration camp established that he had "assisted in persecution for purposes of Section 1251(a)(19)" and therefore was deportable. *Id.* at 661. The court specifically rejected the argument that an individual must have actively or personally participated in persecution to be deportable under the Holtzman Amendment as inconsistent with *Fedorenko*. *Id.* This holding was reaffirmed in *Kulle v. INS*, 825 F.2d 1188 (7th Cir. 1987), *cert. denied*, 484 U.S. 1042 (1988).

Another court reached a different conclusion in *Laipenieks v. INS*, 750 F.2d 1427 (9th Cir. 1985), a deportation proceeding under the Holtzman Amendment against a native of Latvia. The petitioner had served voluntarily as a member of the Latvian Political Police, an organization formed to investigate and arrest individuals who participated in Soviet atrocities against Latvian citizens during the period of Soviet domination which preceded Nazi occupation. *Id.* at 1429. Although Laipenieks admitted slapping Soviet sympathizers taken as prisoners, the court of appeals found that the INS failed to establish by clear and convincing evidence that Laipenieks' individual conduct had been motivated by the political opinion of the prisoners. Relying on the legislative history of the Holtzman Amendment, the court held that deportability under § 1251(a)(19) "may only be sustained when the evidence establishes that the individual in question *personally* ordered, incited, assisted, or otherwise participated in the persecution of individuals." *Id.* at 1431 (emphasis added). Relying on note 34 in *Fedorenko* and the legislative history of the Holtzman Amendment, the court concluded that the proper analysis under the Holtzman Amendment was whether there was "proof of *personal active assistance* or participation in persecutorial acts. . . ." *Id.* at 1432 (emphasis added).

On the other hand, the court in *Maikovskis v. INS*, 773 F.2d 435 (2d Cir. 1985), *cert. denied*, 476 U.S. 1182 (1986), found that personal motivation was immaterial. Maikovskis's application for admission to the United

States under the 1948 DPA concealed his voluntary service as the Chief of Police in a Nazi-dominated precinct in Latvia. *Id.* at 438. In response to the death of two Latvian police officers at the hands of Soviet partisans in the village of Audrini, Maikovskis ordered his Latvian police to join with German soldiers in arresting all of the Audrini villagers, approximately 200-300 persons, and in burning the village to the ground. *Id.* Maikovskis denied involvement in the subsequent executions and murder of almost all of the villagers. *Id.* Nevertheless, his personal participation in the persecution of civilians was clearly established. Maikovskis argued, however, that the government had failed to produce evidence that his conduct was *personally* motivated by the villager's political opinion. *Id.* at 445. Citing to the language, purpose and legislative history of the Holtzman Amendment, the court of appeals held that the personal motivation of the alien for assisting in persecution is immaterial when it is shown that the Nazi persecution in which the alien participated took place because of race, religion, national origin or political opinion. *Id.* at 445-46.

VI.

Although the Holtzman Amendment was designed to fill a loophole in the permanent immigration law and its language is similar to that found in the DPA, the legislative history indicates an intention, at least in part, to accomplish a different purpose. The DPA was designed to provide relief to the multitude of displaced persons and refugees in Europe after the end of World War II. The problem was one of immense proportions and there was need for immediate action. These factors doubtless account for the absence of any legislative history addressing the provision in the 1948 DPA excluding persons who had assisted in persecution and for the decision merely to incorporate portions of the IRO constitution. Thirty years later, when the Holtzman Amendment was adopted, it had become clear that some war criminals, actual perpetrators of the Holocaust and

other war crimes, had entered this country under the 1952 Act. The Holtzman Amendment provided the basis for their deportation.

A.

The Holtzman Amendment's legislative history contains a clear and repetitive message that the amendment was intended to deny "sanctuary in the United States to Nazi *war criminals*" 124 Cong. Rec. 31,647 (1978)(statement of Rep. Holtzman) (emphasis added), and that the "bill applies to any person who committed *war crimes* under the Nazis. . . ." *Id.* at 31,649 (emphasis added). The specific discussion on the House floor in which Representative Holtzman explained the purpose and scope of the bill demonstrates that the focus of the bill's intent centers on Nazi war criminals. Indeed, reference to "Nazi war criminals" or "war criminals" is made no less than nineteen times during the short discussion in which the purpose and reach of the bill is explained. See 134 Cong. Rec. 31,646-50 (1978). At one point Representative Holtzman explained the bill as follows: "The bill as reported here contains an amendment that limits the language of the bill *solely to those persons who engaged in war crimes*. . . ." 134 Cong. Rec. 31,647 (1978)(emphasis added). Again she stated, "[T]he bill is intended to cover *active participation* and not mere acquiescence by the population as a whole." *Id.* at 31,649 (emphasis added). Representative Holtzman was joined in explaining the bill by another subcommittee member, Representative Eilberg, who stated the bill's purpose:

> Mr. EILBERG. [T]he purpose of this bill, which is cosponsored by all of the members of the Subcommittee on Immigration, Citizenship and International Law, is to prevent the entry into, as well as facilitate the deportation from the United States of *aliens who have engaged in persecution* based on race, religion, national origin or political opinion under the Nazis.

Id. at 31,647 (emphasis added). Mr. Eilberg and Ms. Holtzman each went on to make several additional references regarding the bill's applications to those who *engaged* in war atrocities. *Id.* at 31,647-48. Representative Eilberg also stated:

> [T]hat dreadful period in the history of mankind should forever serve as a tragic reminder to all civilized people of the terrible extremes to which an entire nation can be led by a small but highly organized group of demented and *ruthless leaders*. This bill addresses itself to the *members of that group--to the perpetrators* of the "Holocaust."

Id. at 31,647 (emphasis added).

We appreciate the fact that statements in floor debate often do not truly reflect the purpose of an act of Congress. Nevertheless, this bill was the work of Representative Elizabeth Holtzman, and her statement of its purpose is entitled to careful consideration, particularly in view of the similar statements found in the committee report. Representative Eilberg's statements concerning the intent of the subcommittee which first approved the Holtzman Amendment is equally persuasive.

The Holtzman Amendment's purpose of reaching war criminals is further clarified by statements in the legislative history indicating the degree of participation in persecution necessary to come within the Holtzman Amendment. The statement of the Holtzman Amendment's purpose reads:

> Purpose of the Bill
>
> The purpose of the bill is to exclude from admission to the United States *aliens who have persecuted* any person on the basis of race, religion, national origin, or political opinion and to facilitate the deportation of such aliens who have been admitted into the United States.

H.R. Rep. No. 95-1452, 95th Cong., 2d Sess. at 1, *reprinted in* 1978 U.S. Code Cong. & Admin. News 4700. This language appears to require active participation in persecution going beyond "assistance." In discussing the Holtzman Amendment's application, the House Report goes on to state that "it is important to stress that the conduct envisioned must be of a deliberate and severe nature and such that is condemned by civilized governments, . . ." *Id.* at 7, 1978 U.S. Code Cong. & Admin. News at 4706.

B.

Fedorenko established that the DPA provision making persons who assisted in Nazi persecutions ineligible for immigration visas did not depend upon whether the visa applicant had acted voluntarily. Thus, standing alone, the fact that the petitioner in this case acted involuntarily would not have rendered him eligible for entry into the U.S. under the DPA. If the Holtzman Amendment is to be given precisely the same meaning as the DPA, we agree that involuntariness alone would not preclude deportation under section 1251(a)(19). We need not address the difficult question of the effect of involuntariness, standing alone, under the Holtzman Amendment, however, for after disposing of the voluntariness issue, the *Fedorenko* court added the frequently quoted footnote 34.

In the footnote, the Supreme Court stated that the proper focus of a court faced with the problem of limiting the DPA's exclusionary language only to those whom Congress intended to exclude should be upon "whether particular conduct can be considered assisting in the *persecution* of civilians." 449 U.S. at 512 n. 34 (emphasis in original). Fedorenko was found subject to denaturalization for several reasons. He was "a guard who was issued a uniform and armed with a rifle and a pistol, who was paid a stipend and was regularly allowed to leave the concentration camp to visit a nearby village, and who admitted to shooting at escaping inmates on

orders from the commandant of the camp. . . ." *Id.* Obviously, Fedorenko's most egregious conduct was shooting at escaping inmates. The petitioner in the present case, Petkiewytsch, did not ever fire his rifle or otherwise abuse or attempt to injure an inmate.

If, as the Supreme Court stated, the focus under the DPA should be on the "particular conduct" of the immigrant, then given the legislative history of the Holtzman Amendment, that focus should be even more searching under § 1251(a)(19). Although Petkiewytsch wore a uniform and carried a rifle, the Board found that he was at all times a reluctant civilian guard, once himself imprisoned for failing to perform his guard duties diligently. The camp where he served was the least punitive of all types of Nazi camps. The Board also found that the petitioner served under duress and that he was told he would be shot if he attempted to escape. He never personally engaged in acts of persecution, and was released by the British authorities, who interned him as a suspected war criminal, upon a finding that the charges could not be sustained. His "particular conduct" just does not fit the description of a "Nazi war criminal" or a "person[ ] who engaged in war crimes," repeatedly described as the class sought to be made deportable by the Holtzman Amendment.

Given all the circumstances disclosed by this record, we do not believe that *Fedorenko* requires a finding that Petkiewytsch is subject to deportation under § 1251(a)(19). Deporting this petitioner would not further the goal of the Holtzman Amendment and would carry out no discernable policy of the United States.

VII.

In addition to seeking deportation under the Holtzman Amendment, the Order to Show Cause alleged that the petitioner was also subject to deportation under 8 U.S.C. §§ 1251(a)(1) & (2). Subsection (a)(1) provides for the deportation of one who was excludable by the law existing

at the time of entry into the United States, and subsection (a)(2) provides for the deportation of one who entered the United States in violation of Chapter 12 of the Immigration and Nationality Act. The Order to Show Cause alleges that petitioner was excludable from entry into the United States under subsection (a)(1) and that his entry was illegal under subsection (a)(2). The gist of this charge is that Petkiewytsch had procured documentation for entry into the United States "by fraud or willfully misrepresenting a material fact[,] . . ." 8 U.S.C. § 1182(a)(19), and thus was excludible and his entry illegal.

The Board did not reach this charge, and the parties have not raised it here. We agree with the *Maikovsis* court that when an alien has made misrepresentations, "the materiality of the misrepresentations is established where the government shows that disclosure of the concealed information probably would have led to the discovery of facts warranting the denial of a visa." 773 F.2d at 442. In view of our conclusion that Petkiewytsch's service for eight months as a guard at Kiel-Hasse did not subject him to deportation, we do not believe his failure to disclose that conduct related to a "material fact." Furthermore, it would be hard to conclude that the petitioner's failure to disclose his post-war internment was a "willful[ ] misrepresentation" given his complete exoneration by the British authorities.

The petition for review is granted and the decision of the Board of Immigration Appeals is reversed.